IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO :20040 of 2002

Dated: 29th August 2007.

Between:

K. Janardhan, S/o Rama Swamy, aged 53 years, R.O Ghanpur (Mulug) Village & Mandal, Warangal District.

..... PETITIONER

AND

The Prohibition and Excise Superintendent, Warangal District at Subedari, Hanmkonda, Warangal Town and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.NO.20040 OF 2002

ORAL ORDER:

The writ petitioner is a licensee to trade in Arrack at Buddaram, Ghanpur and for the excise year 1989-90 he fell in arrears. Through the impugned notice dated 8th July 2002, the Prohibition and Excise Inspector, Mulug, Warangal District had directed the writ petitioner to pay up a sum of Rs.71,586/- for both the licensed shops put together towards arrears of privilege fee, so that the interest leviable there on can be waived.

Several contentions have been canvassed on behalf of the writ petitioner including that the notice itself is barred by the period of limitation for recovery of the arrears and there is no liability, whatsoever, to pay the said amount, for the reason that under the fiat of the extremist elements, the shops have been closed down and they have not carried on the business for which the privilege fee can be paid. The writ petitioner has also contended that no opportunity has been provided to him by furnishing the breakup of the amounts of arrears calculated and demanded through the impugned order.

The learned counsel for the writ petitioner placing reliance upon a judgment rendered by this

Court in MANDELA NAGASURYA RANGA RAO v. EXCISE SUPERINTENDENT, ELURU AND OTHERS [1], contended that prior to the determination of the arrears, if an opportunity has been provided to him by the department, he would have shown appropriate cause as to how he is not liable to pay so much of money. For sheer failure to provide such an opportunity, the impugned order deserves to be set aside. On the contrary, the learned Government Pleader for Prohibition and Excise submitted that the impugned order is a mere offer to the writ petitioner to come up with payment of the entire amounts of arrears due, so that the department can waive the obligation of his to pay penal interest thereon. If the writ petitioner is not interested to accept the offer of the department, he is free not to comply with the said request so that steps considered appropriate would be initiated for recovery of the entire dues from him.

I have given my anxious consideration for the rival contentions and I find force in the submissions made by the learned counsel for the writ petitioner that before determination of the monies due by the writ petitioner, an opportunity should have been provided to him so that he could have demonstrated as to how much was his actual liability. It is also open to him to have demonstrated successfully the fact, if any, as to whether he has closed down his

business because of the threat unleashed by the extremist elements, which caused him to stop the business. That apart, this Court in the judgment cited supra, had occasion to notice an earlier judgment dealing with somewhat similar question. It would be, therefore, profitable to extract the following passages.

> " 9. In the case of Govindu Rama Rao v. The Revenue Divisional Officer, Srikakulam and others (1) 1975 (2) An.WR 428 it was held that:
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> > " The amount of arrears, which is now sought to be recovered comes under the category of "all sums due to the State Government", which is one of the categories of amounts that can be recovered under the Revenue Recovery Act. The sum due to the Government is an amount ascertained by the appropriate authority of the Government, or by a Court as the case may be. The expression "due" necessarily implies a legal liability. Before a legal liability is fastened to any particular individual, he must be given due opportunity to meet the case of the Government that a particular amount was owed by him to the Government. Otherwise, one sided or arbitrary determination of the amount cannot lead to the conclusion that there is a

legal liability fastened to the particular person. It is only when due opportunity is given to him and the amount is determined after giving that opportunity to the person concerned, the amount is said to be due to the State Government. Does it also mean that the ascertainment would not be complete with the determination of the sum by the authority concerned after giving due notice and opportunity to the person concerned? It is further necessary or can it be said that it will not become an amount due or sum due until the highest Appellate Authority completes consideration of the matter? The latter contention cannot stand the test of scrutiny, because on making practical approach, it cannot be said that in every case there will be an appeal to the highest authority. If there is no appeal, the sum determined by the appropriate authority becomes final. Once that authority fixes the amount after due ascertainment, he cannot go on awaiting the sweet pleasure of the person concerned to go in appeal. Apart from the fact that Section 52 does not give any room for such a construction, if the contention taken on behalf of the petitioner is

> incorporated into Section 52, the very purpose of Section 52 will be defeated and the intention of the Legislature will be violated. The recovery proceedings postulated by the Revenue Recovery Act are summary in nature and were not intended by the Legislature to be a prolonged affair. Once an officer or authority who is empowered to determine the amount fixes it, after giving adequate opportunity to the person concerned it becomes due to the State Government."
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> 10. The position of law as emerges from the principle laid down in Govindu Rama Rao's case (1 supra) is that the Officer or authority who is empowered to determine the amount should fix all sums due to the State Government after giving adequate opportunity to the person concerned and when it is done, the sum becomes due to the State Government has to be recovered as arrears of land revenue under Section 52 of the Revenue Recovery Act."

I am in respectful agreement with the views expressed by the learned single Judge in the aforementioned case.

I, therefore, direct the respondents to furnish the data and details of the determination process and the dues payable by the writ petitioner within a period

of one month from the date of receipt of a copy of this order. Thereafter, the writ petitioner be provided a month's time to file his detailed reply thereto and duly taking into account and consideration the facts and factors pleaded therein, the final determination be undertaken within a further period of one month thereafter.

It is needless to observe that by the time the impugned notice is issued, the period of limitation for recovery of the governmental arrears has not been exhausted and therefore, such questions need not detain the determination process any further.

With these, the writ petition stands disposed of, but however, in the circumstances, without costs.

Nooty Ramamohana Rao, J

mrk

29th August 2007.

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[1] 1997 (2) ALD 352